Mink Originals, Inc. *and* Local 1-3, FLM–FJC, United Food and Commercial Workers' International Union, AFL–CIO. Case 2–CA–24541

March 9, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

Upon a charge filed on August 8, 1990, by Local 1-3, FLM–FJC, United Food and Commercial Workers' International Union, AFL–CIO (the Union), the General Counsel of the National Labor Relations Board issued a complaint against Mink Originals, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On November 4, 1991, the General Counsel filed a Motion for Summary Judgment and Issuance of Decision and Order, with exhibits attached. On November 8, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the Consolidated Complaint [sic] shall be deemed to be admitted to be true and shall be so found by the Board." According to the undisputed allegations in, and the attachments to, the Motion for Summary Judgment, the General Counsel wrote to the Respondent's president Peter Soulious, by certified mail, on October 15, 1991, informing him that no answer to the complaint had been received and notifying him that unless the Respondent filed an answer by October 28, 1991, a Motion for Summary Judgment would be filed with the Board.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a domestic corporation with an office and place of business in New York, New York, has been engaged in the manufacture of fur garments. Annually, the Respondent purchases and receives goods and materials valued in excess of $50,000 from points directly outside the State of New York. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All employees who do matching (for cutting of garments or trimmings), cutting, squaring, operating, nailing, clipping, glazing, ironing, handsewing, striping, finishing, examining, taping, staying, stapling, stretching, steaming, and also to mean and include inside sales personnel whose primary function is showroom selling, salesmen, designers, pattern-makers, shipping clerks, porters, pick-up and delivery workers, and floor workers.

The United Fur Manufacturers, Inc. (the Association) was an organization composed of employers engaged in the manufacture of fur garments, which existed for the purpose, inter alia, of representing its employer-members in negotiating and administering collective-bargaining agreements with the Union. The Respondent was an employer-member of the Association until the Association ceased to exist in or about January or February 1990.

At all times material, until about February 15, 1990, the Respondent was bound by the collective-bargaining agreement between the Association and the Union for the employees in the unit and has embodied recognition of the Union in various collective-bargaining agreements, the most recent of which was effective by its terms from February 16, 1987, to February 15, 1990. At all times material, the Union, by virtue of Section 9(a) of the Act, has been, and is, the exclusive collective-bargaining representative of the employees in the unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

Article X, *Health and Welfare Pension Benefits*, of the collective-bargaining agreement provided:

> 2(a) In order to provide health insurance for regular employees and eligible members of their families, the Employer shall pay to the Benefit Fund the sum of $145.90 per employee per month. Contributions for all regular employees shall be paid for each month during the contract year, as defined in Section 4.
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> 2(b) During the life of the agreement the employer shall be responsible for paying any increase in premium rates by an insurance carrier or actuarial equivalent . . . up to . . . 10% . . . of the sum of $145.90 per month . . . .

In 1988, the contributions required under article X described above in subparagraph (a) were increased to $160.49 per employee per month. The monthly payments required by article X of the collective-bargaining agreement, described above in subparagraph (a) are due on the 10th of each month for the preceding month. On various occasions throughout February to June 1990, the Union, by its representative Paul Vlahos, at the Respondent's facility, requested that the Respondent make payments as required by the collective-bargaining agreement. The Respondent has failed and refused to make payments to the benefit funds as required by article X for the months of February to June 1990. The subjects set forth in article X of the collective-bargaining agreement relate to wages, hours, and other terms and conditions of employment in the unit and are mandatory subjects for the purposes of collective bargaining. The Respondent's failure and refusal to make payments to the benefit funds was without prior notice to the Union and without having afforded the Union an opportunity to negotiate and bargain as the exclusive representative of the Respondent's employees with respect to such acts and conduct and the effects of such acts and conduct.

We find that by the Respondent's failure and refusal to make payments to the benefit funds as detailed above, the Respondent has failed and refused, and is failing and refusing, to bargain collectively with the representative of its employees and the Respondent thereby has been engaging in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act. The unfair labor practices of the Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

CONCLUSIONS OF LAW

By failing to make payments to the benefit funds for the months of February to June 1990 without prior notice to the Union and without having afforded the Union an opportunity to negotiate and bargain as the exclusive representative of the Respondent's employees with respect to such acts and conduct and the effect of such acts and conduct, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

To remedy the Respondent's unlawful failure or refusal to make payments to the benefit funds for the months of February to June 1990 as required by article X of the collective-bargaining agreement, we shall order it to make whole its unit employees for any loss of benefits they may have suffered as a result of the Respondent's unlawful conduct[1] as prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), and with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Mink Originals, Inc., New York, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with Local 1-3, FLM–FJC, United Food and Commercial Workers' International Union, AFL–CIO as the exclusive representative of the unit regarding wages, hours, and other terms and conditions of employment.

(b) Unilaterally discontinuing payments to the benefit funds for the months of February to June 1990.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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[1] These losses apparently include payments on the employees' behalf to certain employee benefit funds. Because the provisions of employee benefit fund agreements are variable and complex, we leave to further proceedings the question of any additional amounts the Respondent must pay into the benefit funds to satisfy our make-whole remedy. See *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).

The Respondent shall also reimburse its employees for any expenses ensuing from its failure to make contributions to various funds established by the collective-bargaining agreement between the Respondent and the Union. *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981).

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and, on request, bargain with the Union as the collective-bargaining representative of the unit.

(b) Make payments to the benefit funds as required by article X of the collective-bargaining agreement.

(c) Make whole the employees in the unit in the manner set forth in the remedy section of this decision.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its place of business at New York, New York, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively with Local 1-3, FLM–FJC, United Food and Commercial Workers' International Union, AFL–CIO as the exclusive representative of the unit regarding wages, hours, and other terms and conditions of employment.

WE WILL NOT fail and refuse to make payments to the benefit funds as required by article X of the collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL immediately recognize and, on request, bargain collectively in good faith with the Union as the exclusive representative of the unit regarding wages, hours, and other terms and conditions of employment.

WE WILL make payments to the benefit funds as required by article X of the collective-bargaining agreement.

WE WILL make whole employees in the unit for the failure to make payments to the benefit funds for the months of February to June 1990.

MINK ORIGINALS, INC.